



May 20, 2002

Ms. Tracy A. Pounders  
Assistant City Attorney  
City of Dallas  
1500 Marilla, Room 7BN  
Dallas, Texas 75201

OR2002-2669

Dear Ms. Pounders:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#163233.

The City of Dallas (the "city") received a request for all psychological documents or exams used to determine the requestor's fitness for job duty as a deputy city marshal. Although you originally raised sections 552.101, 552.103, 552.104, 552.107, 552.108, 552.110, and 552.111 of the Government Code, you make no arguments for withholding the requested information under any of these sections. *See* Gov't Code § 552.301(e) (requiring governmental body to submit to this office within fifteen business days of receiving an open records request general written comments stating the reasons why any stated exceptions apply that would allow the information to be withheld). However, under section 552.305 of the Government Code, you provided notice of the request to the individual who examined the requestor and invited him to submit arguments to this office for withholding the information at issue.<sup>1</sup> This office has received no arguments from this individual, who you identify as Mr. Conrad Hamric.

We note, however, that the Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, while it ordinarily will not raise other

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<sup>1</sup>See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as chapter 611 of the Health and Safety Code. Section 611.002 reads in pertinent part as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a), (b). Thus, the information you have submitted as responsive to the request is confidential with respect to the general public and may only be disclosed as provided by sections 611.004 and 611.0045. Section 611.0045 states in pertinent part:

(a) Except as otherwise provided by this section, *a patient is entitled to have access to the content of a confidential record made about the patient.*

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health.

(c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient's physical, mental, or emotional health and shall include a copy of the written statement in the patient's records. The statement must specify the portion of the record to which access is denied, the reason for the denial, and the duration of the denial.

Health & Safety Code § 611.0045(a), (b), (c) (emphasis added). In this instance, the requestor is the patient. Consequently, section 611.0045(a) gives the requestor a right of access to the requested information, except as provided by other subsections of section 611.0045. *See* Open Records Decision No. 565 at 3 (1990) (upon written consent of subject, mental health records must be released). Section 611.0045(b) permits the professional to deny a patient access to any portion of that patient's mental health records if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health. Additionally, the above-quoted section 611.0045(c) establishes the procedure that a professional must follow when denying a patient access to the patient's own records.

Since chapter 611 of the Health and Safety Code requires the professional to consider the potential impact on the patient's health, the city must inform the professional of this request. The professional must make the determination required by the statute, and must state whether or not access is denied to part or all of the requested information. The professional must provide that decision in writing to the city. If the professional decides not to deny access, then all of the information must be released to the requester. If the professional denies access only to a portion of the information, then the remainder of the information must be released. The city must not release any of the information until the professional's written answer is received. If the professional denies access to any portion of the information, the professional must also submit a written denial of access to the requester as required by section 611.0045(c) of the Health and Safety Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 163233

Enc. Submitted documents

c: Mr. Broderick Phillips  
800 Link Drive #1414  
Duncanville, Texas 75116  
(w/o enclosures)

Mr. Conrad Hamric  
Bent Tree Psychiatric Associates  
16800 Dallas Parkway, Suite 150  
Dallas, Texas 75248  
(w/o enclosures)